

(3) A debarment for the causes listed at § 223.137(g) shall not exceed five (5) years.

(b) The debarring official may extend the debarment for those causes listed at § 223.137 (a)–(f) of this subpart for an additional period if that official determines that an extension is necessary to protect the Government's interest. However:

(1) A debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based;

(2) If debarment for an additional period is necessary, the debarring official shall initiate and follow the procedures in § 223.138 to extend the debarment.

(c) The debarring official may consider terminating the debarment or reducing the period or extent of debarment, upon the purchaser's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(d) The debarring official shall make final disposition of a reconsideration request under paragraph (c) of this section in writing within 30 working days of receipt of the reconsideration request and supporting documentation, unless the debarring official extends this period for good cause. The notice of the decision shall set forth the reasons for granting or denying the request.

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§ 223.140 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a purchaser constitutes debarment of all divisions or other organizational elements of the purchaser, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or classes of sales.

(2) The debarring official may extend a debarment decision to include any affiliates of the purchaser, if they are—

(i) Specifically named and

(ii) Given written notice of the proposed debarment and provided an opportunity to respond (see § 223.138(b)).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a purchaser may be imputed to a purchaser when the conduct occurred in connection with the individual's performance of duties for or on behalf of the purchaser, or with the purchaser's knowledge, approval, or acquiescence. The purchaser's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) The fraudulent, criminal, or other seriously improper conduct of a purchaser may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the purchaser who participated in, knew of, or has reason to know of the purchaser's conduct.

(3) The fraudulent, criminal, or other seriously improper conduct of one purchaser participating in a joint venture or similar arrangement may be imputed to other participating purchasers if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those purchasers. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

§ 223.141 Suspension.

(a) The suspending official may, in the public interest, suspend a purchaser on the basis of adequate evidence for any of the causes in § 223.142, using the procedures in § 223.143. However, the existence of a cause for suspension does not necessarily require that the purchaser be suspended. In making any suspension decision, the suspending official shall consider the seriousness of the purchaser's acts or omissions and any mitigating factors.

(b) Suspension is a serious action to be imposed, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration shall be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result. This assessment shall include an examination of basic documents such as contracts, bids, awards, inspection reports, and correspondence, as appropriate.

§ 223.142 Causes for suspension.

(a) The suspending official may suspend a purchaser suspected, upon adequate evidence, of the following:

- (1) Commission of:
 - (i) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;
 - (ii) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain; or performing a public contract or subcontract; or
 - (iii) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a purchaser of Government timber.
- (2) Indictment for any of the causes listed in paragraph (a) of this section constitutes adequate evidence for suspension.
- (3) A purchaser's suspension from the purchaser of timber by another Federal agency which sells timber.

(b) The suspending official may, upon adequate evidence, also suspend a purchaser for any other cause so serious or compelling that it affects the present responsibility of a purchaser of Government timber.

§ 223.143 Procedures for suspension.

(a) *Investigation and referral.* Information which may be sufficient cause for suspension under § 223.142 shall be reported to the Forest Service Suspending Official. Generally, such information should be referred through the

Forest Supervisor and the Regional Forester. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits and a recommendation for action. Where the statement of facts indicates a possible criminal offense, except possible antitrust violations, the suspending official shall notify the Office of Inspector General, USDA. Where the statement of facts indicates a possible antitrust violation, the suspending official shall notify the Antitrust Division, Department of Justice.

(b) *Decisionmaking process—*(1) *Notice of suspension.* When a purchaser and any specifically named affiliates are suspended, the suspending official shall so advise the purchaser and any specifically named affiliate immediately by certified mail, return receipt requested. Such notice shall specify:

- (i) That they have been suspended as of the date of the notice;
- (ii) That the suspension is based on an indictment or other adequate evidence that the purchaser has committed irregularities,
 - (A) Of a serious nature in business dealings with the Government, or
 - (B) Seriously reflecting on the propriety of further Government dealings with the recipient;
- (iii) Any such irregularities shall be described in terms sufficient to place the recipient on notice without disclosing the Government's evidence;
- (iv) That the suspension is for a temporary period of time pending the completion of an investigation and such legal proceedings as may ensue;
- (v) The cause(s) relied upon under § 223.142 for imposing suspension;
- (vi) The effect of the suspension (see § 223.135);
- (vii) The specific procedures governing suspension decisionmaking in § 223.143 (b)(1) through (b)(6).

(2) *Submission in opposition.* Within 30 calendar days after receipt of the notice of suspension, the purchaser or any specifically named affiliate may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts.